

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4794 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

ARIFSHA MUSHASHA THRO BROTHER HAIDARSHA GULABSHA

Versus

STATE OF GUJARAT

Appearance:

Mr. D.M. Thakkar, Advocate for Petitioner
Mr. K.T.Dave, A.G.P for the respondent No.1,2 &3.
MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 14/10/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. D.M. Thakkar for the petitioner, learned A.G.P. Mr. K.T.Dave for the respondents nos.1, 2 and 3 and Ms. P.J. Davawala for the respondent no.4.

1. The detention order dated 7-5-1999 passed by the respondent no.2-District Magistrate, Surat against the

detenu in exercise of powers conferred under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM" for short) is challenged by the petitioner in the present petition filed under Article 226 of the Constitution.

2. The grounds of detention produced at Annexure "B" indicate that Thakorebhai Narsinhbhai Patel was the occupier of a piece of land bearing Survey no.414/1/B of Abhava Village Taluka Choriyasi, District Surat . That on raid being carried out by the Civil Supply Department on 5-2-1999, 1540 litres of petroleum solvent stored on the said land was seized as unauthorized material and criminal proceedings were initiated. It is also indicated in the grounds of detention that the said Thakorebhai Narsinhbhai Patel was financing the detenu -Arifshah Musashah to indulge into illegal activity of collecting and selling petroleum solvent from the said land. That the detenu used to acquire solvent at cheaper rate from the drivers of the tanker transporting the same from ONGC as well as Reliance Refinery to different destinations and the detenu used to purchase the same at the rate of Rs.8/per litre. That the detenu used to sell the same at Rs.10/-per litre without any licence or permit as required under the Control Order and as such was making illegal profit by blackmarketing.

The grounds of detention further indicate that subsequently within four days of the said raid, the detenu was caught red-handed at a place known as Vesu Patia Taluka Choriyasi, District Surat with a tempo bearing registration no.GJ-5-V-378 and a three wheeler bearing registration no.GJ-5-V-5244. That there were 18 barrels naptha petroleum - about 3600 litres in both the vehicles. That Thakorebhai had no pass, permit or licence to possess the same or transport the same, and thereby, criminal proceedings were initiated in the Court of Chief Judicial Magistrate. That on inquiry it was found that said Thakorebhai was dealing in the said illegal activity of blackmarketing petroleum solvent with the aid and assistance of the detenu-Arifshah Musashah. That on the basis of the material produced before the detaining authority, the detaining authority has come to the conclusion that the detenu was abating said Thakorebhai to indulge into aforesaid blackmarketing activity. That resort to enforcement of general law was insufficient, and as such, in order to prevent the detenu from continuing his prejudicial activity, the detention order has been passed.

3. The petitioner has challenged the detention order

on numerous grounds. It has been contended on behalf of the detenu at the Bar that the detenu made representation dated 12-8-1999 to the District Magistrate through a relative which was not considered in time and as such the continued detention of the detenu has become illegal. It is also required to be noted that similar representation was also sent to the Economic Advisor, Government of India, Consumer Affairs Department, Shastri Bhavan, New Delhi. The learned Advocate appearing on behalf of the detenu has submitted that the said authority received the said representation on 16-8-1999, copy of which is produced at Annexure "E" alongwith copy of representation dated 12-8-1999, however, the respondent no.4 has also failed to consider the said representation expeditiously and as such, the continued detention of the petitioner has become illegal.

4. That the respondent no.2-District Magistrate has filed two affidavits both dated 25th September, 1999. That one P.R. Shukla, Deputy Secretary, Government of Gujarat has filed two affidavits dated 17-8-1999 and 5-10-1999 respectively. That the respondent no.2-the detaining authority has admitted the receipt of representation made on behalf of the detenu dated 12-8-1999, however, attempt is made to explain that office of the respondent no.2 received the said representation on 16-8-1999 and after going through the representation, it was found that same was sent by one Babubhai I. Patel a so called brother of the detenu. That no address of said Babubhai I. Patel was mentioned in the representation. Thereby, the respondent no.2 deputed one Mr. Pathan and Mr. Vaidya the Supply Inspectors to investigate and on receipt of investigation it was found that said Babubhai I. Patel is not the real brother of the detenu. That thereafter, the said representation was forwarded to the State Government on 20-8-1999 with remarks of the facts collected during the aforesaid investigation. That affidavit dated 5-10-1999 filed by said P.R. Shukla on behalf of the respondent no.1-State Government discloses the fact that the representation made on behalf of the detenu dated 12-8-1999 was received on 20-8-1999 with the letter of respondent no.2-District Magistrate and was sent to the Special Branch on 23-8-1999. That the Special Branch processed the same and representation was placed before the concerned Minister on 25th August, 1999 and thereafter decision regarding rejection of the same was communicated on 27th August, 1999. That the above stated facts clearly suggest that the respondent no.2-the detaining authority who has become functus officio after the detention order has been approved by the State

Government has no cause or authority to investigate the address of the person who has forwarded the representation to the authority. That said explanation of delay from 16-8-1999 to 20-8-1999 cannot be accepted even though stated on oath. In the eye of law said fact amounts to withholding the representation of the detenu without any cause which has resulted into inordinate delay in considering the same by the competent authority-the respondent no.1, and as such, the continued detention of the detenu is rendered illegal on account of violation of the fundamental right of the detenu guaranteed under Article 22(5) of the Constitution. Furthermore, the affidavit filed by one R.C. Dhankar dated 13th August, 1999 on behalf of the respondent no.4 is devoid of any explanation regarding consideration or non consideration of representation made on behalf of the detenu. In view of the said fact, it has to be held that the respondent no.4 has also failed to consider the representation made on behalf of the detenu as soon as possible which amounts to breach of constitutional imperative under Article 22(5) of the Constitution, and as such, the impugned order as well as continued detention of the detenu has become illegal.

5. Since the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

6. On the basis of the foregoing discussion, the petition is allowed. The impugned order dated 7-5-1999 passed by the respondent no.2- District Magistrate, Surat against the detenu is hereby quashed and set aside. The detenu- Arifshah Musashah is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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